IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

WILLIAM & NATACHA SESKO,	)	
	)	
Appellants,	)	No. 37574-5-II
	)	
v.	)	**DECLARATION OF ALAN**
	)	**S. MIDDLETON IN**
CITY OF BREMERTON,	)	**SUPPORT OF MOTION TO**
	)	**EXTEND TIME TO APPEAL**
Respondent.	)	**AND OPPOSITION TO**
	)	**COURT'S MOTION TO**
	)	**DISMISS**

Alan S. Middleton states:

1. I am the attorney of record for appellants William and Natacha Sesko. I make this declaration in support of the Seskos' motion to extend the time to appeal and in opposition to the Court's motion to dismiss.

2. This matter involves an attempt by the City of Bremerton to recoup the alleged costs of abating a nuisance on the Sesko property. The

City's abatement contractor removed substantial quantities of the Seskos' personal property – vehicles, heavy equipment, and building materials – and delivered them to scrap dealers.

3. The abatement contract purported to transfer title to the personal property removed to the abatement contractor, who bid the job in two parts – the cost of abatement and a "salvage credit." During the job, the City modified the contract. As to the Seskos' Arsenal Way property, the City eliminated the bid "salvage credit" but required the contractor to account for "actual salvage" receipts. As to the Seskos' Pennsylvania Avenue property, the City eliminated the salvage credit altogether.

4. The Seskos argued in a prior appeal that the City had failed to properly credit them for salvage value, and specifically argued that the City was required to follow the execution statute (RCW 6.21) in disposing of the property – something the City admittedly failed to do. This Court remanded a prior judgment against the Seskos with instructions to the trial court to determine whether the City had properly credited salvage value. This Court did not decide the issue of whether the City had to comply with the execution statute. A copy of the Unpublished Opinion (Case No. 33159-4-II, Aug. 11, 2006) is attached as Exhibit A.

5. A trial was held in Kitsap County Superior Court. Judge Roof entered a written memorandum opinion on February 13, 2008. A

copy of Judge Roof's written memorandum opinion is attached as Exhibit B.

6. In part, Judge Roof held that the execution statute did not apply. On appeal, the Seskos would argue in part that Judge Roof erred in failing to require the City to perform the abatement in conformance with the execution statute such that an accurate "salvage value" could be calculated.

7. The trial court entered judgment against the Seskos on March 7, 2008. However, a copy of the judgment was not received by counsel for the Seskos until March 10, 2008. A Notice of Appeal was filed April 9, 2008, identifying the judgment entered on March 7, 2008. The Notice was therefore filed thirty-three days after entry of the judgment, but thirty days after receipt of the judgment by the Seskos' counsel.

8. At the time of entry of the judgment below, I was dealing with several personal issues, the most serious of which were (b) (6) (b) (6) .

9. I am attorney-in-fact for (b) (6) (b) (6)

10. On Wednesday, March 5, 2008, (b) (6)

(b) (6)

11. I received a copy of the conformed judgment by fax from the trial court on Monday, March 10, 2008, and immediately calendared the deadline for filing a notice of appeal for thirty days later – or April 9, 2008. This admittedly is thirty-three days after entry of the judgment. I cannot explain why I chose March 10 rather than March 7 as the beginning date for filing a Notice of Appeal except in the context of the issues discussed above.

12. I did not catch my mistake before the deadline had passed. I attended a firm retreat from April 3 through 6, 2008, and moved my offices that weekend. The latter required that I box up my office on Wednesday, April 2, and unpack on Monday, April 7. I was not unpacked and ready to get back to work until April 8, 2008, and discovered the calendaring error late that day. I filed the Notice of Appearance on Wednesday, April 9, 2008.

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true.

Executed this 30th day of April, 2008, at Seattle, Washington.

Alan S. Middleton

EXHIBIT A

Westlaw.

Not Reported in P.3d
Not Reported in P.3d, 134 Wash.App. 1033, 2006 WL 2329467 (Wash.App. Div. 2)
(Cite as: Not Reported in P.3d, 2006 WL 2329467)

H

City of Bremerton v. Sesko
Wash.App. Div. 2,2006.

NOTE: UNPUBLISHED OPINION, SEE RCWA 2.06.040

Court of Appeals of Washington,Division 2.
The CITY OF BREMERTON, a municipal corporation, Respondent,
v.
William **SESKO** and Natacha **Sesko**, and their marital community, Appellants.
Nos. 33159-4-II, 33261-2-II.

Aug. 11, 2006.

Appeal from Superior Court of Kitsap County; Hon. M Karlynn Haberly, J.

Alan Scott Middleton, Attorney at Law, Dennis Dean Reynolds, Davis Wright Tremaine LLP, Seattle, WA, for Appellants.
David P. Horton, Law Office of David P. Horton Inc. PS, Silverdale, WA, Roger Alan Lubovich, Bremerton, WA, for Respondent.

UNPUBLISHED OPINION

QUINN-BRINTNALL, C.J.

***1** The City of Bremerton obtained judgment liens for costs it incurred to abate the nuisance on William and Natacha Sesko's Arsenal Way and Pennsylvania Avenue properties in Bremerton.[FN1]The Seskos [FN2] challenged the lien amounts, asserting that they are incorrect because the City failed to properly credit and deduct the salvage value of items removed from the properties as per the court's earlier orders. The Seskos counterclaimed, arguing that the City damaged their properties while abating the nuisance.

FN1. The City obtained a separate lien on each property; we consolidated the Seskos' appeals for review.

FN2. We are aware that William Sesko passed away during the litigation of this case. We refer to the Appellants as the Seskos for clarity and intend no disrespect.

The trial courts below found the Seskos collaterally estopped from challenging the liens and entered judgment for the City. Because collateral estoppel does not bar the Seskos from litigating whether the lien amounts are properly calculated in accord with the trial court's earlier order, we reverse.

FACTS

The Seskos operated junkyards on their Arsenal Way and Pennsylvania Avenue properties. *City of Bremerton v. Sesko,* 100 Wn.App. 158, 160, 995 P.2d 1257,*review denied,*141 Wn.2d 1031 (2000). The City of Bremerton ordered the Seskos to cease and desist this activity on both properties in 1995. Believing that the junkyard finding mischaracterized their property, the Seskos did not comply.

Arsenal Way Property

On January 30, 1998, the trial court issued an order declaring the junkyard on this property a nuisance and granted an injunction. The trial court ordered all of the property removed except for residential items. The Seskos appealed and this court affirmed that order on appeal. *Sesko,* 100 Wn.App. at 165.FN3

FN3. We held that collateral estoppel barred the Seskos from challenging whether their property was a nuisance. *Sesko,* 100 Wn.App. at 163-64.We also held that the trial court did not abuse its discretion by ordering unconditional abatement. *Sesko,* 100 Wn.App. at 164-65.

On December 15, 2000, the trial court entered an order authorizing the City and its contractors to im-

mediately enter the Arsenal Way property and prepare for bidding to remove the property to abate the nuisance. In November 2001, the trial court issued orders clarifying its earlier orders permitting the City to enter and abate the nuisance. The Seskos appealed these orders, and this court affirmed the orders in an unpublished opinion. *City of Bremerton v. Sesko,* noted at 116 Wn.App. 1054 (2003), *review denied,* 150 Wn.2d 1036 (2004).[FN4]

> FN4. We held that the clarifying orders were not appealable because they merely implemented the previous orders allowing abatement of the nuisance and that collateral estoppel barred the Seskos from relitigating the issue that the items selected for removal are not 'junk' and challenging whether the operations on their properties constituted operation of a junkyard. *Sesko,* 2003 Wn.App. LEXIS 689, at *9.

The January 30, 1998 order and clarifying orders stated that the Seskos would be responsible for the charges incurred to abate the nuisance, but '{i}f any objects or vehicles on the property have salvage value, then the City of Bremerton must credit the salvage value of such objects against the charges imposed for the removal of goods.'Clerk's Papers (CP) (# 33159-4-II) at 20 (emphasis added).

On May 6, 2004, the City moved for entry of judgment liens for the costs of abatement. The Seskos challenged this motion, arguing that (1) the City was required to conduct sales of the Seskos' property under the statutory mandates provided for execution sales; (2) the City failed to properly credit the salvage value of removed items; (3) the City was required to give an accounting for removed items so that proper salvage credit can be assessed; (4) the City was barred by the doctrine of avoidable consequences from claiming the amount it did for the abatement; and (5) the City damaged their property during the abatement. The trial court ruled that the Seskos were collaterally estopped from challenging the liens and entered a judgment lien on the Arsenal Way property in the amount of $172,462.26. The Seskos appeal.

Pennsylvania Avenue

*2 In a May 8, 1998 order, the trial court found that the Seskos' junkyard operations on the Pennsylvania Avenue property constituted a nuisance and ordered them to abate the nuisance. On the same day, the trial court entered a mandatory permanent injunction. And on appeal, this court affirmed the trial court's unconditional abatement order. Sesko, 100 Wn.App. at 165.

On December 15, 2000, the trial court issued an order clarifying the order permitting the City to unconditionally abate the nuisance and impose a lien on the Seskos' property to recover the costs of abating the nuisance, less any salvage value.

Once the City's contractors started the abatement process, the Seskos removed some of the items off of the property and then put them back onto the property. The City obtained more clarifying orders, which the Seskos appealed and this court upheld on appeal. *Sesko,* noted at 116 Wn.App. 1054; *City of Bremerton v. Sesko,* noted at 122 Wn.App. 1041 (2004).[FN5] The City moved for entry of a judgment lien on March 3, 2005. The Seskos challenged this motion, making the same arguments listed above.

> FN5. After the contractor removed property from the site, the Seskos put other property on the site. In 2003, the trial court granted the City an enforcement order authorizing it to enter the Seskos' Pennsylvania Avenue property and bring conditions into compliance with the 1998 order. Sesko, 2004 Wn.App. LEXIS 1727, at *8-9. We held that collateral estoppel barred the Seskos from challenging the enforcement order because that order only implemented the 1998 order and placed no additional restrictions upon the Seskos. *Sesko,* 2004 Wn.App. LEXIS 1727, at

*10-11.

The trial court found that collateral estoppel barred the Seskos' objection to the entry of the judgment lien because the Seskos' objection was 'identical to the previous unconditional abatement challenge.'CP (# 33261-2-II) at 611. Additionally, the trial court stated that even if collateral estoppel did not apply, the Seskos are 'estopped from asserting any deficiency in the method, manner, time, and terms relating to the salvage value of {the Seskos'} property.' CP (# 33261-2-II) at 611. It reasoned that estoppel applied because 'where an individual voluntarily relinquishes possession of collateral such that they no longer assert any interest in it and did not intend to bid on it, then that individual is estopped from claiming damages associated with its sale.'CP at 612. It then held that items removed from the Seskos' property were collateral for purposes of offsetting the abatement costs and that the Seskos, after having been given ample time to abate the nuisance themselves, voluntarily relinquished any possession rights to the remaining property when the City entered and cleared the nuisance. Therefore, it ruled that the Seskos were estopped from claiming damages associated with the allegedly inaccurate credited amount.

On April 15, 2005, the trial court entered judgment for the City in the amount of $79,792.19. And the Seskos' timely appeal followed.

ANALYSIS

We address whether collateral estoppel bars the Seskos from challenging the amount of the judgment liens on their property.

Collateral Estoppel

The trial court's December 15, 2000 order clarifying judgment permitted the City to impose liens on the Seskos' property to recover the costs of abating the nuisance. It specifically required that 'if any object, boat, or vehicle on the property has salvage value, then the City of Bremerton must credit the salvage value ... against charges imposed for the removal of goods.'CP (# 33261-2-II) at 77 (emphasis added).

Arsenal Way

*3 Originally, the Arsenal Way property cleanup bid was subtotaled at $94,970. This bid included a $138,970 base bid, $1,000 hazardous waste testing value, and a $45,000 salvage value credit. But the removable items' salvage value, as well as the amount of work necessary to abate the nuisance, decreased when the Seskos moved some items from the property. To remedy this situation, the City recommended that 'the base-bid of $138,970 remain unchanged and that salvage credit be based on actual salvage receipts provided by {Buckley Recycling Center, Inc.}.' CP (# 33261-2-II) at 405.

As of April 19, 2002, the City calculated the salvage credit at $18,824, but it expected that there would be more in the final stages of removal.

Buckley was paid $139,865 for its abatement work on this property. The trial court entered a judgment lien of $172,462.26 on the Arsenal Way property.

Pennsylvania Avenue

Originally Buckley's subtotal basic bid for the Pennsylvania Avenue property was $51,584. This included a base bid of $70,834, $750 hazardous waste testing value, and $20,000 salvage credit. The Seskos moved some of the items from the property. With fewer items to remove, the amount of work necessary to abate the nuisance decreased. In addition, according to the City, the salvage credit value decreased from $20,000 to zero. Because of this, the City reduced Buckley's base bid by $28,458 and it adjusted the original $20,000 salvage credit to zero.

A document titled 'CONTRACT CHANGE ORDER NO. 1' states that '{c}hanges in inventory ad-

versely impacted salvage credit listed in original contract amount,' increasing the contract amount by $16,277.31. CP (# 33261-2-II) at 407. The work change order does not specify the parcel to which this increase attaches. The Seskos attribute this increase to the costs of abating the Pennsylvania property nuisance; the City does not contest this. We assume that it applies to the Pennsylvania property.

No salvage value was attributed to the property removed from the Pennsylvania Avenue property and, thus, no salvage value was credited to the Seskos.

The City paid Buckley $70,517.38. The trial court awarded the City this full amount in the judgment lien.

At the lien hearing, the Seskos argued that the City requested an incorrect amount because the City failed to credit the correct amount of salvage value as required in the trial court's earlier orders. The Seskos argued that the true costs of the abatement could not be determined and charged to them without an accounting of the removed items and deducting the salvage value of those items.

The trial court held that collateral estoppel barred the Seskos from raising these challenges to the lien amount.

We review de novo a trial court's determination that collateral estoppel precludes litigation of an issue. *Christensen v. Grant County Hosp. Dist. No. 1,* 152 Wn.2d 299, 305, 96 P.3d 957 (2004). The doctrine of collateral estoppel prevents relitigation of issues that have already been decided by the courts. *Christensen,* 152 Wn.2d at 307.Collateral estoppel promotes the wise use of scarce judicial and court resources and prevents inconvenience of the parties within the court system. *Christensen,* 152 Wn.2d at 306-07.The purpose of collateral estoppel is not to prevent the parties from receiving a full and fair hearing on the merits of the issues to be tried but to provide finality when those parties have had a full and fair hearing in previous proceedings. *Christensen,* 152 Wn.2d at 306-07.The doctrine 'is intended to prevent retrial of one or more of the crucial issues or determinative facts determined in previous litigation.'*Christensen,* 1 52 Wn.2d at 306 (quoting Luisi Truck Lines, *Inc. v. Wash. Utils. & Transp. Comm'n,* 72 Wn.2d 887, 894, 435 P.2d 654 (1967)).

*4 Collateral estoppel applies in a subsequent proceeding to preclude issues litigated and finally determined in the first proceeding.*Christensen,* 152 Wn.2d at 307.[FN6]

> FN6. Res judicata bars the relitigating not only error issues that were litigated and resolved in the earlier proceeding, but also issues that could have been litigated and resolved. Karl B. Tegland, 14A Washington Practice: Civil Procedure, sec. 35.33 at 479 (1st ed.2003).

The party asserting that collateral estoppel applies bears the burden of persuading the court that the following elements have been met:

> (1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding; (2) the earlier proceeding ended in a judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding; and (4) application of collateral estoppel does not work an injustice on the party against whom it is applied.

Christensen, 152 Wn.2d at 307.

If there is a doubt as to whether collateral estoppel applies, the issues should be resolved in favor of granting an opportunity to litigate the issue. Karl B. Tegland, 14A Washington Practice: Civil Procedure, sec. 35.33 at 480 (1st ed.2003).

The City has not satisfied the first element of collateral estoppel because the issues litigated in the earlier proceedings are not identical to the issues raised in the current proceeding. Thus, collateral es-

toppel does not bar the Seskos from challenging the amount of the judgment lien.

The prior proceedings between the City and the Seskos addressed the method for calculating the cost of abatement. They did not and could not address whether the amount of the City's judgment after the abatement had been completed was properly calculated. Although related, the earlier litigation addressed only whether the items on the property were a nuisance and whether and how the City could abate that nuisance. *Sesko,* noted at 122 Wn.App. 1041;*Sesko,* noted at 116 Wn.App. 1054;*Sesko,* 100 Wn.App. 158.

Collateral estoppel precludes the Seskos from arguing that the City had no right to abate the nuisance on its property and also that the City is not entitled to recoup abatement costs. But collateral estoppel does not preclude the Seskos from arguing that the amount of those costs, as reflected in the judgment liens, was improperly calculated under the court's previous orders governing the abate- ment.

As stated above, the Arsenal Way property's modified contract provided that Buckley would abate the property for the original base bid price of $138,970, less the salvage value of the property removed, and that the salvage value would be established by receipts. The modified Pennsylvania property contract reflected the estimated zero value of the salvage on the property.

The Seskos claim that numerous items having salvage value were removed from both properties but that this value has not been attributed and deducted from the City's requested lien amount. The City argues only that the Seskos are collaterally estopped from challenging the claimed lien amount; it does not argue that it credited the Seskos with all of the salvage value. The amount the Seskos must pay the City for abatement of the nuisance on their property has not been previously adjudicated between the parties. Thus, collateral estoppel does not bar the Seskos' right to litigate this issue.

***5** The Seskos are entitled to a hearing to determine the salvage value, if any, of items removed from their properties and a determination of whether the lien amount the City seeks is properly calculated under the trial court's earlier abatement orders.

To avoid any confusion on remand, we briefly address the trial court's alternative basis precluding the Seskos' claim in regards to the Pennsylvania Avenue property. Relying on *Commercial Credit Corp v. Wollgast,* 11 Wn.App. 117, 521 P.2d 1191,review denied, 84 Wn.2d 1004 (1974), the trial court found that even if collateral estoppel did not apply to prevent the Seskos from challenging the lien amounts, estoppel by abandonment did. According to the trial court, the Seskos' personal property subject to the abatement order was collateral for the purposes of offsetting the abatement costs. And the Seskos voluntarily relinquished any possessory rights to this property when they failed to correct the nuisance in the time specified by court orders. Because of this voluntary relinquishment, the trial court found that the Seskos were now estopped from claiming damages associated with the credited amount of salvage value.

But the abatement order specifically gave the Seskos the right to have the lien offset by any salvage value. Thus, the Seskos clearly have a right to assert that the amount of salvage value credited to them was deficient. Moreover, to the extent that the trial court implied that the Seskos abandoned their rights in the property, this is incorrect. Abandonment requires nonuse plus a showing of intent to relinquish. *Manello v. Bornstine,* 44 Wn.2d 769, 772, 270 P.2d 1059 (1954); see also *Shew v. Coon Bay Loafers, Inc.,* 76 Wn.2d 40, 50, 455 P.2d 359 (1969); *Turner v. Gilmore,* 50 Wn.2d 829, 831, 314 P.2d 658 (1957). Under the abatement order, the Seskos retained a right to salvage value. No intent to abandon that right has been shown here.

Damage Done During Abatement

The Seskos also sued the City claiming that it dam-

aged both the Arsenal Way and Pennsylvania Avenue properties in the abatement process. They claim that collateral estoppel does not bar litigation of this issue. The Seskos have not properly presented this issue for our review. They set this claim out as one of a list of claims in their brief. This claim reads in its entirety: 'Damage to Property: For recovery of an offset for the cost of repairing damage caused by the abatement contractor.'Br. of Appellant at 32. The Seskos cite no authority and provide no additional argument clarifying this issue. Thus, we are unable to address it further. RAP 10.3(a)(5); *Milligan v. Thompson,* 110 Wn.App. 628, 635, 42 P.3d 418 (2002) ('A party waives an assignment of error not adequately argued in its brief').

The Seskos' other arguments regarding (1) the proper procedures to be used when the City sells removed property to offset the costs incurred abating the nuisance and (2) the ultimate disposition of the removed property i.e., whether the City can keep the property are essentially arguments regarding whether the City properly credited and deducted from the lien amount the value of the removed goods and may be addressed on remand.

*6 We reverse and remand for a determination of whether the City properly followed the court order that required deducting any salvage value must be deducted from the costs of abatement.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

We concur: HUNT and VAN DEREN, JJ.
Wash.App. Div. 2,2006.
City of Bremerton v. Sesko
Not Reported in P.3d, 134 Wash.App. 1033, 2006 WL 2329467 (Wash.App. Div. 2)

END OF DOCUMENT

EXHIBIT B

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP COUNTY

THE CITY OF BREMERTON,
a Municipal Corporation,
Plaintiff,
vs.
WILLIAM J. SESKO and NATACHA SESKO, and their marital community,
Defendants.

No. 97-2-01749-3

Memorandum Opinion

THIS MATTER comes before the Court following remand pursuant to the Division II Court of Appeals Decision No. 33519-4-II. The City is represented by Mark E. Koontz, Assistant City Attorney. William Sesko (deceased) and his wife Natacha, the defendants, are represented by Alan S. Middleton. A bench trial was conducted January 29–February 1, 2008, and the matter was taken under advisement to address the following issues raised by the Seskos.

1. **The Application of the "Sales Under Execution" Statutes**

RCW 7.48.280 specifies that "[t]he expense of abating a nuisance, by virtue of a warrant, can be collected by the officer in the same manner as damages and costs are collected on execution." The Seskos contend that this means that RCW 6.21, titled Sales Under Execution, applies to the City's nuisance action because that is the only way to

JUDGE JAY B. ROOF
Kitsap County Superior Court
614 Division Street MS-24
Port Orchard, WA 98366

assure proper credit to the property owners for materials removed from their land. However, the Court finds that RCW 6.21 does not apply to the proceedings in this case for a number of reasons.

First, the provision of RCW 7.48.280 cited by the Seskos refers to abatement pursuant to warrants, and the City has not sought a warrant of abatement in this action nor was it argued before the Court of Appeals. Second, even if the provision cited referred to abatement proceedings more generally, the sentence uses the permissive word "can" rather than the word "shall." This word choice reflects courts' broad authority in conducting abatement proceedings. Finally, RCW 7.48.250 allows for judicial orders of abatement as well as warrants of abatement (to which RCW 6.21 might possibly apply). Because the Washington State legislature has provided more than one method of abatement, it is likely the legislature concluded that more than one method would ensure proper credit to property owners for materials removed from their land.

2. **Sum Certain Contract Versus a Price Based on the Volume of Property Removed**

The original contract price for clean up of both parcels was $158,571.54. This amount factored in labor, hazardous waste testing, the salvage value of the property removed, and an 8.2 percent sales tax. The contract contemplated the Seskos' right to tag and remove property from the two sites.

As a result of the Seskos' clean up efforts, the salvage value of the property was reduced. The City responded fairly and reasonably by modifying the contract with Buckley Recycle Center (BRC) to take into account the reduction in the contract value as well as the reduction in the amount of labor required to remove the property. If the City were held to the original contract price, the Seskos would also lose the benefit of the reduced labor calculated for removing less property.

3. **Bid Solicitation Process**

The Seskos contend that by soliciting bids from contractors who could remove the property as well as purchase it, the pool of potential bidders was small and the resulting bid accepted by the City was lower than if removal and sale were two separate bid transactions.

In this case, eight companies bid to remove and purchase the salvage property, and the City accepted BRC's bid, which was the lowest bid for the cost of removal. BRC's bid also provided the highest salvage value estimate for the salvage property. Additionally, the accepted bid was 38 percent less than the City's engineer's estimate for removal of the salvage property. The bid also provided for a larger offset for salvage value than estimated by the City engineer's office.

Additionally, the Court finds that the City did have the requisite incentive for an arm's length transaction because the City had to pay up front to abate the nuisance; recoupment was not automatically assured, nor was it a foregone conclusion.

4. **Ownership of the Property Removed from the Parcel**

RCW 7.48 does not address ownership of property removed pursuant to an abatement action. However, though not explicitly deciding ownership, the December 15, 2000, order clarifying the original injunction includes a provision for crediting the Seskos for any salvage value for the property. Also, the contract entered into between the City and BRC provided that all property removed by BRC belonged to BRC for salvage purposes.

Moreover, the Seskos had a means of retaining ownership over the property: they could have removed any property they wished to keep. In fact, they did just that by removing (by their estimate) half a million dollars worth of property. This behavior suggests that they were fully aware that if they did not remove the property, they would no longer own it. The Seskos had countless opportunities to comply with court orders to clean up their land. This last minute push to remove property suggests more than a change of heart and a desire to comply; it suggests awareness that property removed would no longer belong to them. Incidentally, it appears that even the Court of Appeals assumed the property no longer belonged to the Seskos in light of its mandate to this Court to determine a salvage value for the property.

Conclusion

Throughout this process, the City gave the Seskos a lengthy amount of time to abate the nuisance on their land, yet the Seskos did not begin to comply until the eleventh hour despite their affirmative obligation to do so. They had many opportunities to relocate

and/or sell the property on their land; either of these options would have guaranteed that they would retain control over the property and maximize the return on their investment. Because they did not abate the nuisance themselves, they lost exclusive control of the property and the ability to determine the value of their property. They are not, however, completely without a remedy: statutes and court orders were followed throughout this process to ensure as full and fair property valuation as possible. Here, the City solicited bids from a broad enough base so as to give the bid process and subsequent prevailing bid validity. The City chose not only the lowest bid made, but also the bid which provided for the highest salvage value for the property removed.

In weighing the evidence, the Court was originally concerned about the opportunities for self-service: the City's self-service at the Seskos' expense, BRC's self-service at the expense of the City and the Seskos, and the Seskos' ability to help themselves to anything they wanted regardless of whether that would impact the contract price. As stated above, the Seskos did have many opportunities throughout the years to remove any property they wanted to keep. So, the opportunities for self-service were numerous. The Seskos were successful in removing significant amounts of property—by their own estimate, one-half million dollars worth.

The real difficulty in analyzing this case relates to the value of the salvage. The Court previously addressed the issue of ownership of the property, and the Court reiterates that neither the contract nor the Court of Appeals decision read the nuisance statute to mean that BRC would "remove, relocate and store" all the material *for the Seskos' benefit*. As Ms. Sesko indicated, one person's treasure is another person's junk—hence, the whole reason for the lawsuit and abatement of the nuisance.

The Seskos claim they removed a half-million dollars worth of property, so inferentially there has to have been between one-half and one-million dollars of property remaining. The highest salvage value given was BRC's bid allocating $65,000.00 for the two properties. The other bidders treated salvaging the property (with an average bid value to be approximately $9,800.00) as more of an impediment than an asset. Given the mandate from the Court of Appeals to determine whether the City's action to abate the

nuisance followed the Court's order requiring deduction of any salvage value from the cost of abatement, the Court finds that not only did the City follow the Court's order, it explicitly incorporated salvage into the bid process and required a value for salvage: bids were valued at cost of abatement less the salvage value of the property.

In this case, the contract salvage value was reduced by the removal of property by the Seskos. On the other hand, examining Exhibit 17, the Court is satisfied that the $4,750.00 for the Arsenal Way salvaged equipment was probably a very conservative and low value. Nevertheless, the City acted in good faith. As evidenced in Exhibit 1, the City deducted from the contract price the expenses not incurred in removing equipment the Seskos removed on their own, something over and above the bid process and contractual terms.

Credible evidence clearly demonstrates that an appropriate salvage value was taken into account as an offset against the cost of abatement. Moreover, not only was salvage value contemplated in the bid process and subsequent contract, a reduction in the cost of removal was credited to the Seskos as well. While the Court believes that the credit calculated for the salvage value is probably low for the Arsenal Way equipment, that credit is the only concrete evidence the parties provided to the Court. To substitute another value such as that suggested by Ms. Sesko would require this Court to engage in impermissible speculation. Therefore, the value given in Exhibit 17 stands as the value of the salvage property.

The Court finds the City has accounted for salvage value credited against the cost of abatement.

Dated: February 13, 2008.

JUDGE JAY B. ROOF

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Kitsap County Superior Court
614 Division Street MS-24
Port Orchard, WA 98366